SENATE BILL No. 167

DIGEST OF INTRODUCED BILL

Citations Affected: IC 21-31-2-14; IC 23-17-19-2.

Synopsis: University ownership of certain entities. Authorizes a state educational institution to acquire and retain shares or other ownership interests in a privately held entity if: (1) the purpose of acquiring and retaining the shares or other ownership interests is not speculative; (2) acquiring and retaining the shares or other ownership interests will help the state educational institution meet its educational or research purposes; (3) the funds used to acquire the shares or other ownership interests are not provided through state appropriations or through contributions from a state agency or a local government entity; (4) the state educational institution actively participates in managing the privately held entity for educational or research purposes; and (5) the state educational institution's investment in the privately held entity is related to an activity or a program of the state educational institution and to the educational institution's mission. Permits a public benefit corporation to merge with a state educational institution, without court approval, if the public benefit corporation is controlled by the state educational institution.

Effective: July 1, 2016.

Kenley

January 5, 2016, read first time and referred to Committee on Appropriations.

Introduced

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 167

A BILL FOR AN ACT to amend the Indiana Code concerning higher education.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 21-31-2-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 14. The board of trustees of a state educational institution may acquire shares or other ownership interests in a privately held entity (as defined in IC 23-1-20-10) and retain ownership in those shares or ownership interests, if all the following conditions are met:**

(1) The purpose of acquiring and retaining the shares or other ownership interests is not speculative in nature.

(2) The board of trustees of the state educational institution determines that acquiring and retaining the shares or other ownership interests will help the state educational institution meet its educational or research purposes.

(3) The funds or other property used by the board of trustees of the state educational institution to acquire the shares or other ownership interests in the privately held entity are not provided through state appropriations or through

contributions from a state agency or a local government entity.

(4) The state educational institution actively participates in managing the privately held entity for educational or research purposes.

(5) The state educational institution's investment in the privately held entity is related to an activity or a program of the state educational institution and to the educational institution's mission.

SECTION 2. IC 23-17-19-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) Without the prior approval of the circuit court or superior court of the county where the corporation's principal office or, if the principal office is not located in Indiana, the corporation's registered office, is located in a proceeding that the attorney general has been given written notice, a public benefit or religious corporation may only merge with the following:

(1) A public benefit or religious corporation.

(2) A foreign corporation that would qualify under this article as a public benefit or religious corporation.

(3) A wholly-owned foreign or domestic business or mutual benefit corporation if the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger.

(4) A business or mutual benefit corporation if the following conditions are met:

(A) On or before the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets, including goodwill, of the public benefit corporation or the fair market value of the public benefit corporation if the corporation were to be operated as a business concern are transferred or conveyed to a person who would have received the corporation's assets under IC 23-17-22-6(a)(5) and IC 23-17-22-6(a)(6) had the corporation dissolved.

(B) The business or mutual benefit corporation returns, transfers, or conveys any assets held by the business or mutual benefit corporation upon condition requiring return, transfer, or conveyance, that occurs by reason of the merger, in accordance with the condition.

(C) The merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become:

(i) members in;
(ii) shareholders in; or
(iii) officers, employees, agents, or consultants of;
the surviving corporation.

(D) The requirements of section 8 of this chapter are met.

(5) A state educational institution if it is a public benefit corporation and the public benefit corporation is controlled by the state educational institution before the merger.

(b) At least twenty (20) days before consummation of any merger of a public benefit corporation or a religious corporation under subsection (a)(4), notice, including a copy of the proposed plan of merger, must be delivered to the attorney general.

(c) Without the prior written consent of the attorney general or of the circuit court or superior court of the county where:

(1) the corporation's principal office is located; or
(2) if the principal office is not located in Indiana, the corporation's registered office is located;

in a proceeding in which the attorney general has been given notice, a member of a public benefit or religious corporation may not receive or keep anything as a result of a merger other than a membership or membership in the surviving public benefit or religious corporation. The court shall approve the transaction if the transaction is in the public interest.